BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS STATE OF CALIFORNIA

1 DEPARTMENT OF CONSUMER AFFAIRS 2 3 In the Matter of the Citation Against: Case No. CV-2009-3218 5 JEANETTE WOODS 5735 E. Belgravia Avenue OAH No. 2011110576 6 Fresno, CA 93727 7 Vocational Nurse License No. 8 VN 127376 9 Respondent. 10 **DECISION** 11 12 On June 7, 2012, in Fresno, California, Catherine B. Frink, Administrative Law Judge, Office 13 of Administrative Hearings, heard this matter. 14 Elena L. Almanzo, Deputy Attorney General, Office of the Attorney General, represented 15 Complainant. 16 Respondent, Jeanette Woods, appeared and was represented by Patricia G. Tilley, Attorney 17 at Law. 18 19 Oral and documentary evidence was received; the record was closed, and the matter was 20 submitted for decision on June 7, 2012. 21 The Board of Vocational Nursing and Psychiatric Technicians (Board) received the Proposed 22 Decision, dated July 2, 2012, from Catherine B. Frink on July 6, 2012. The Proposed Decision is 23 attached hereto. 24 25 The Board then considered the adoption of the proposed decision. 26 Pursuant to the California Government Code Section 11517(c)(2)(C), the Proposed Decision 27 is amended to correct a technical or minor change that does not affect the factual or legal basis of the

proposed decision. The Proposed Decision is amended as follows:

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1. On Page 1 paragraph 3 reads: "Jeanette Woods (respondent) appeared and was represented by Patricia G. Tilley, Attorney at Law." The respondent was not represented by an attorney. The statement "Jeanette Woods (respondent) appeared and was represented by Patricia G. Tilley, Attorney at Law." is hereby changed to "Jeanette Woods (respondent) appeared and represented herself."

The attached Proposed Decision of the Administrative Law Judge is hereby adopted, as amended, by the Board as the Final Decision in the above-entitled matter.

This Decision shall become effective on October 25, 2012.

IT IS SO ORDERED this 25th day of September, 2012.

Todd D'Braunstein, PT President

BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Citation Against:

JEANETTE WOODS Fresno, CA 93727

Vocational Nurse License No. VN 127376

Respondent.

Citation No. CV-2009-3218
OAH No. 2011110576

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 7, 2012, in Fresno, California.

Elena L. Almanzo, Deputy Attorney General, represented Teresa Bello-Jones, J.D., M.S.N., R.N. (complainant), Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board).

Jeanette Woods (respondent) appeared and was represented by Patricia G. Tilley, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted for decision on June 7, 2012.

FACTUAL FINDINGS

1. On May 21, 1985, the Board issued vocational nurse license number VN 127376 to respondent. The license expired on October 31, 2010, and has not been renewed.¹

¹ The Board retains continuing jurisdiction over respondent's license, pursuant to Business and Professions Code section 118, subdivision (b), which states:

⁽b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which

- 2. On August 25, 2011, complainant, acting in her official capacity, issued Class "B" Citation Order No. CV-2009-3218 to respondent (Citation). The Citation alleged that respondent violated Business and Professions Code section 2878, subdivisions (a) and (j), and section 2885.² The Citation was issued pursuant to the authority of section 125.9 and seeks to fine respondent \$1,500 for unprofessional conduct for knowingly and willfully practicing as a licensed vocational nurse without a valid license.
- 3. On September 10, 2011, respondent signed a Notice of Appeal, which was received by the Board on September 12, 2011. The matter was then set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.
- 4. Except as specifically noted, respondent was employed as a vocational nurse at Twilight Haven Retirement Apartments, Assisted Living, and Skilled Nursing Care (Twilight Haven) from July 2, 1991 to on or about October 5, 2010.
- 5. In October of 2004, respondent sought to renew her vocational nurse license for the period from November 1, 2004, through October 31, 2006. On October 29, 2004, respondent submitted a check to the Board in the amount of \$105, in payment of the license renewal fee. Respondent's address was listed on the check as follows: 4686 East Truman, Fresno, California 93725 (Truman address). The Truman address was respondent's address of record with the Board. On November 3, 2004, a license with an expiration date of October 31, 2006 was issued to respondent.
- 6. On November 22, 2004, the Board received notification that the check was returned for insufficient funds (NSF). As a result, the license expiration was backdated to October 31, 2004.
- 7. On November 22, 2004, the Board sent a First Notification Letter Dishonored Check (First Notice) to respondent at the Truman address. The First Notice indicated that respondent's license had expired on October 31, 2004, and indicated that respondent's check had been returned by her bank for NSF. The First Notice instructed respondent to pay \$115 (\$105 renewal fee, plus \$10 dishonored check fee) to the Board by money order, certified check or cashier's check. The First Notification stated, in part:

it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

² Unless otherwise indicated, all subsequent undesignated statutory references are to the Business and Professions Code.

Your license is no longer valid. Continued employment with an invalid license is grounds for disciplinary action.

(Bolding and italics in original.)

- 8. On March 29, 2005, the Board sent a Second Notice Dishonored Check to respondent at the Truman address. The Second Notice noted that the Board had received no response to the First Notice, and informed respondent that she must pay \$165 to renew her license (\$105 renewal fee, plus \$50 delinquent fee and \$10 dishonored check fee). The Second Notice reiterated the warning that respondent's license was no longer valid, and that continued employment was grounds for disciplinary action.
- 9. After receiving no response, the Board sent a Third and Final Notice Dishonored Check to respondent at the Truman address on April 13, 2005. The letter informed respondent that she owed \$165, payable by money order, certified check, or cashier's check, and further stated:

Return this letter with your check to ensure proper identification. Your license is no longer valid. Continued employment with an invalid license is grounds for disciplinary action.

If the Board does not receive reimbursement as specified above within ten (10) days from the date of this letter, this matter will be referred to the Franchise Tax Board accordingly.

(Bolding, italics and underlining in original.)

- 10. Respondent's license was expired from November 1, 2004, through April 21, 2006. On April 22, 2006, the Board received funds intercepted by the Franchise Tax Board. Respondent's license was reinstated, with an expiration date of October 31, 2006.
- 11. Respondent did not timely renew the license, and it lapsed as of November 1, 2006.
- 12. On October 22, 2008, the Board received a delinquent Renewal Application Licensed Vocational Nurse, from respondent for the period from November 1, 2006, through October 31, 2008. The renewal application form showed respondent's address as 5735 East Belgravia Avenue, Fresno, California 93727 (Belgravia address). The renewal application was incomplete and did not contain respondent's signature as required. Respondent was notified of the deficiencies in the renewal application, and a hold was placed on the license renewal.

- 13. On November 15, 2008, the Board received a corrected renewal application from respondent. The Board mailed a license to respondent on November 17, 2008, with an expiration date of October 31, 2008. Since the license renewal was not approved until after the expiration date, and respondent did not timely renew the license for the period beginning November 1, 2008, the license continued in its lapsed status as of November 1, 2008.
- 14. On November 22, 2008, an automated renewal notice was mailed to respondent for the renewal period from November 1, 2008, through October 31, 2010. A second renewal notice was mailed to respondent on December 13, 2008.
- 15. Respondent's license was expired from November 1, 2008, through January 26, 2010.
- 16. On January 20, 2010, respondent was served with a notice from David Viancourt, Administrator at Twilight Havens, which stated, in part:

Twilight Haven has learned that your LVN license has lapsed. In order for you to continue to provide licensed medical services, you will need to renew your LVN license at the earliest opportunity.

Effective January 20, 2010, you will be placed on administrative leave with no pay until such time that your LVN license has been renewed or reissued....

17. On January 25, 2010, respondent submitted an Application for Renewal of License, which she signed on January 16, 2010. Question 12 on the Application stated:

HAVE YOU COMPLIED WITH THE FINGERPRINT REQUIREMENT? For licenses expiring after April 1, 2009, fingerprinting is required as a condition of renewal for anyone licensed prior to January 1, 1998 or for whom a record of the submittal no longer exists.

- 18. Respondent checked the box designated "N/A," which stated, "Check the 'n/a' (not applicable) box if you are renewing a license that expired before April 1, 2009." Respondent paid a delinquent fee of \$230, and the Board issued respondent a license renewal on January 28, 2010, with an expiration date of October 31, 2010.
 - 19. Respondent returned to work at Twilight Haven on February 2, 2010.
- 20. On November 4, 2010, respondent submitted a renewal application for the period between November 1, 2010, and October 31, 2012. On the renewal application respondent checked "no" to the question, "[h]ave you complied with the fingerprint requirement as directed above under 'fingerprint requirement?" As a result, a hold was

placed on the license. On November 18, 2010, the fingerprint requirement was satisfied and the hold was lifted. On November 25, 2010, a license was issued with an expiration date of October 31, 2012.

- 21. On December 3, 2010, the Board received notification that the check submitted by respondent for the renewal payment was returned by respondent's bank for NSF. As a result, the license expiration was backdated to October 31, 2010. The license remained expired as of the date of hearing.
- 22. Respondent's license was expired/lapsed from November 1, 2004, through April 21, 2006, and from November 1, 2006, through January 28, 2010. Except for the period from January 20, 2010, through February 2, 2010, respondent continued to work at Twilight Haven as a vocational nurse during periods when her license was expired, thereby impersonating a licensed vocational nurse at times when she was not validly licensed by the Board. By holding herself out as a validly licensed vocational nurse when she was not so licensed, respondent engaged in acts involving dishonesty that were related to the duties and functions of a licensee. Respondent's actions were inconsistent with the standard of care, which require valid licensure to perform the functions of a vocational nurse. Respondent's conduct was unprofessional.
- 23. Respondent stated that she moved from the Truman address to the Belgravia address in March 2004, and therefore did not receive the October 2004 license renewal application in a timely fashion. She acknowledged that she did not notify the Board of her change of address, and that her address of record in October 2004 was still the Truman address.
- 24. Respondent claimed that she did not knowingly work with an expired license. Her testimony was not credible.
- 25. Respondent is aware of the fact that her license has expired, and she cannot work as a vocational nurse unless and until the license is renewed. Respondent is not currently employed, and she has not worked as a vocational nurse since the expiration of her license in October 2010. She is currently collecting social security.
- 26. There was no persuasive evidence of mitigation, extenuation, or rehabilitation submitted by or on behalf of respondent.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Section 2875 authorizes the Board to discipline the holder of a vocational nurse license for any of the reasons provided in Article 3, commencing with section 2875, of the Vocational Nursing Practice Act.

2. Section 2878 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct...

 $[\P]...[\P]$

- (j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.
- 3. Section 2885 provides that, "[i]t is unlawful for any person or persons not licensed as provided in this chapter to impersonate in any manner or pretend to be a licensed vocational nurse, or to use the title 'Licensed Vocational Nurse,' the letters 'L.V.N.,' or any other name, word, or symbol in connection with or following his name so as to lead another or others to believe that he is a licensed vocational nurse."
- 4. Section 125.9 provides, in pertinent part, that a board "may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto."
 - 5. California Code of Regulations, title 16, section 2523, states in pertinent part:
 - (a) The executive officer of the Board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the Board pursuant thereto.

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- (c) Each citation shall be in writing, shall indicate the classification of the citation, and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.
- (d) For licensee citations, the citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation or both.

- (e) The citation shall inform the cited person of the right to an informal conference concerning the matter and of the right to an administrative hearing.
- (f) The citation shall be served upon the cited person personally or by certified and regular mail.
- 6. California Code of Regulations, title 16, section 2523.2, states in pertinent part:
 - (a) There shall be three classes of violations:
 - (1) Class "A";
 - (2) Class "B"; and
 - (3) Class "C."
 - (b) In determining the violation class for licensee violations, the following factors shall be considered:
 - (1) Nature and severity of the violation.
 - (2) Length of time that has passed since the date of the violation.
 - (3) Consequences of the violation, including potential or actual patient harm.
 - (4) History of previous violations of the same or similar nature.
 - (5) Evidence that the violation was willful.
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 - (d) The fine for each Class "B" violation shall be no less than \$1,001 nor more than \$2,500. A Class "B" violation includes:
 - (1) A violation that results in or could have resulted in patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include but are not limited to patient abandonment and falsifying nursing notes.

- (2) Any violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain, or fraud.
- (3) A minor or technical violation that continues for six months or more in duration; or
- (4) A minor or technical violation with one or more Class "C" citations.
- (e) The fine for each Class "C" violation shall not exceed \$1,000. A Class "C" violation is a minor or technical violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care and which continues for less than six months duration. Such violations include but are not limited to practicing with an expired license, precharting, charting errors, or verbal abuse.
- 7. California Code of Regulations, title 16, section 2523.4, states:

In any citation which includes a fine, the following factors shall be considered in determining the amount of the fine to be assessed:

- (a) Gravity of the violation.
- (b) History of previous violations of the same or a similar nature.
- (c) The good or bad faith exhibited by the cited person.
- (d) Evidence that the violation was willful.
- (e) The extent to which the cited person cooperated with the board's investigation.
- (f) The extent to which the cited person has remediated any knowledge and/or skills deficiencies which could have injured a patient.
- (g) Any other mitigating or aggravating factors.

Standard of Proof

8. The standard of proof in a citation proceeding is a preponderance of the evidence. (*Owens v. Sands* (2009) 176 Cal.App.4th 985, 989.)

Cause to Issue Citation

9. By reason of the facts set forth in Findings 4 through 22, respondent worked as a licensed vocational nurse between November 1, 2004, and April 21, 2006, and between November 1, 2006, and January 20, 2010, when her license had expired and had not been renewed, in violation of section 2885. In so doing, she engaged in acts of dishonesty related to the duties and functions of a licensed vocational nurse, pursuant to section 2878, subdivision (j), and she engaged in unprofessional conduct pursuant to section 2979, subdivision (a). Therefore, cause exists to issue a citation and impose a civil penalty pursuant to section 125.9 and California Code of Regulations, title 16, section 2523, subdivision (a).

Issuance of an Administrative Penalty (Fine) in the Amount of \$1,500 is Reasonable and Appropriate

- 10. Complainant designated the Citation as a Class "B" citation. As set forth in California Code of Regulations, title 16, section 2523.2, subdivision (d)(3), a Class "B" violation is considered to be a minor or technical violation that continues for six months or more in duration. As set forth in California Code of Regulations, title 16, section 2523.2, subdivision (e), a "minor or technical violation" includes practicing with an expired license. The violations set forth in Legal Conclusion 9 were properly classified as Class "B" violations, because of their lengthy duration. California Code of Regulations, title 16, section 2523.2, subdivision (d), provides that "[t]he fine for each class 'B' violation shall be no less than \$1,001, nor more than \$2,500."
- 11. California Code of Regulations, title 16, section 2523.4, sets forth the criteria to be considered in assessing a fine. In this case, respondent practiced without a valid license for several years. Her attempted license renewal in October 2004 was invalidated because of a NSF check, and she did not keep the Board advised of her current address in order to receive notice of her expired license status. Unlicensed practice is a matter of grave concern to the Board. Respondent persisted in this conduct for several years. Her claim that she did not knowingly practice with an expired license was not credible.
- 12. Under all of the facts and circumstances, the administrative penalty sought in this matter, in the amount of \$1,500, is reasonable and appropriate. The penalty is in the mid-range for a Class "B" citation. Respondent did not produce persuasive evidence to warrant a reduction in the fine.

ORDER

The appeal by Jeanette Woods of Citation Order No. CV-2009-3218 is DENIED, and the issuance of the citation order is UPHELD. Jeanette Woods shall pay the sum of \$1,500 to the Board no later than 30 days after the effective date of this Decision.

Dated: July 2, 2012.

Catherine B. Punk CATHERINE B. FRINK

Administrative Law Judge

Office of Administrative Hearings



BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS

2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945 Phone (916) 263-7800 Fax (916) 263-7857 Web www.bvnpt.ca.gov



CITATION ORDER

Pursuant to Business and Professions Code Section 125.9, the Board of Vocational Nursing and Psychiatric Technicians (hereinafter referred to as the "Board") issues this class 'B' citation to:

Jeannette Woods 5735 E. Belgravia Ave. Fresno, CA 93727

Citation Number	Fine Assessed
CV-2009-3218	\$1,500.00

Licensing History

Board records reflect that on May 21, 1985, the Board issued license number VN 127376 to Jeannette Woods; said license expired on October 31, 2010.

Cause for Citation

Violation of Section 2878 (a) of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct..."

Violation of Section 2878 (j) of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

(j) The commission of any act involving dishonesty..."

Violation of Section 2885 of the California Business and Professions Code, which reads as follows:

"It is unlawful for any person or persons not licensed as provided in this chapter to impersonate in any manner or pretend to be a licensed vocational nurse, or to use the title "Licensed Vocational Nurse," the letters "L.V.N.," or any other name, word, or symbol in connection with or following his name so as to lead another or others to believe that he is a licensed vocational nurse."

Explanation of Violation:

The Board has received information that substantiates your unprofessional conduct. At the time of the misconduct, you were employed as a vocational nurse at Twilight Haven. Board records verify that, on several occasions, dishonored checks were submitted for payment of license renewal, which resulted as a lapse in your license. Facility documents substantiate your employment confirming that you practiced as a licensed vocational nurse without holding current authorization, in which, you accepted payment for services.

Your actions demonstrate a failure to exercise the degree of professional judgment expected of a licensed vocational nurse. You knowingly and willfully practiced as a licensed vocational nurse without a valid license authorizing such practice. Such actions are inconsistent with standard practice and unacceptable for the licensed vocational nurse.

Fine and/or Order of Abatement

You are hereby ordered to pay an administrative penalty (fine) in the amount of \$1,500.00 within thirty (30) days after service of the citation.

Payment of this administrative penalty should be made directly to the **Board** at **2535 Capitol Oaks Drive**, **Suite 205**, **Sacramento**, **CA 95833**. Payment will only be accepted in the form of a <u>cashier's check or money order and must include the citation number</u>. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.

Appeal Rights

You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within fourteen (14) calendar days after service of the citation.

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within thirty (30) calendar days after service of the citation.

Please refer to the enclosed Statement of Rights for additional appeal information. Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, <u>your license will not be renewed</u> until the fine is paid.

TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

ATTACHMENTS

- Payment of Fine Waiver of Appeal Rights
- Notice of Appeal
- > Statement of Rights

DM